



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 26, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0038

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded
# 2	15.120 - POL 3. Officers Will Document All Bias Crimes and Incidents on an Offense Report	Not Sustained - Lawful and Proper

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) inadequately investigated an incident due to the Complainant's race or gender. It was also alleged that NE#2 failed to mark this incident as a hate crime or bias incident.

ADMINISTRATIVE NOTE:

On August 23, 2023, the Office of Inspector General certified this investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

The Complainant filed an OPA complaint. It stated that, on January 19, 2023, a neighbor called the Complainant's sister (Community Member #1 or CM#1) for medical assistance. The Complainant wrote that 9-1-1 was called. The Complainant alleged that another neighbor (Community Member #2 or CM#2) threatened her due to the Complainant's perceived race and status as a transgender person. The Complainant stated that the responding officers did not take it seriously, and she wanted "this case properly looked into as a hate crime."

OPA opened an investigation. During its investigation, OPA reviewed the OPA Complaint, Computer Aided Dispatch (CAD) Call Report, Incident Report, and Body Worn Video (BWV). OPA also interviewed the Complainant and named employees.



By way of background, the Complainant lives in an apartment unit with her sister, CM#1. There is an ongoing dispute between the Complainant and CM#1 against CM#2, their neighbor. Broadly, CM#2 believes the Complainant and CM#1 are “squatting” in their apartment unit and smoking, which is objectionable to CM#2. On the other side, the Complainant and CM#1 believe CM#2 is harassing them.

On January 19, 2023, a resident of the apartment building fell inside her apartment unit, which is nearby to CM#2’s unit. The resident called CM#1 for assistance. The Complainant and CM#1 responded to that resident’s unit but were unable to enter because the door was locked. The resident tried to pass a key under the door to the Complainant and CM#1. 9-1-1 was called and the Seattle Fire Department and both named employees responded. No report was written, and the call was categorized as “Assistance Rendered.”

The next day, CM#1 called the police to report an interaction with CM#2 that occurred the day before. NE#1 and NE#2 responded. Their response to this call is the subject of this complaint.

The named employees’ response to this call—including their interactions with CM#1 and CM#2—were recorded on BWV and are not in dispute.

NE#1 and NE#2 responded to a 9-1-1 call involving “ongoing threats of physical violence and harassment,” which had an initial categorization of “BIAS BIAS-RACIAL, POLITICAL, SEXUAL MOTIVATION.” The call was cleared with a final disposition of “Disturbance – Other.”

NE#1 and NE#2 responded to the apartment and contacted CM#1. CM#1 stated that the night before, while she and the Complainant were attempting to assist their elderly neighbor, CM#2 came out of the apartment and yelled, “Get away from the door, I’ll kick your ass, you don’t belong here, you live here illegally, go back to where you came from, you don’t live here asshole.” CM#1 stated the Complainant is Native American and thought the comments were related to her sister’s race. CM#1 stated she and the Complainant pointed pepper spray at CM#2 to keep her away.

While speaking with CM#1, both NE#1 and NE#2 asked clarifying questions of CM#1 to determine CM#1’s best recollection of the exact words CM#2 used. NE#2 also asked CM#1 to clarify whether CM#1 believed the statement “got back to where you came from” was racially motivated or related to CM#2’s belief that the Complainant and CM#1 were squatting illegally in the apartment. CM#1 responded that CM#2 had been informed multiple times that the Complainant is on the lease and not squatting.

NE#1 and NE#2 spoke to CM#2. CM#2 stated she observed the Complainant and CM#1 at the neighbor’s door with pepper spray. CM#2 stated she told the Complainant and CM#1, in sum and substance, “get the fuck away from the door, you don’t belong here.” CM#2 stated CM#1 approached her while pointing pepper spray at her. CM#2 denied stating, “go back to where you came from.” Referring to the Complainant and CM#1, CM#2 stated, “they’re both white.” CM#2 also appeared to be white. CM#2 reiterated her belief that the Complainant had been “squatting” in the apartment for “four years.”

NE#2 authored an Incident Report which was consistent with the events recorded on BWV. NE#2 did not select the “Incident Contains Bias Elements” selection in the offense code.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing

The Complainant alleged NE#1 and NE#2 engaged in bias-based policing based on her race or gender.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. This includes different treatment based on the race, gender, and gender identity of the subject. *See id.*

The Complainant alleged that NE#1 and NE#2 failed to fully investigate this incident and did not mark the incident as a hate crime or bias incident, which the Complainant alleged prevented this incident from being further investigated. The Complainant alleged these failures were motivated by her race or status as a transgender woman.

Here, OPA cannot identify any other investigative steps NE#1 and NE#2 should have reasonably taken. BWV documented that the named employees met with CM#1, took CM#1’s statement, and asked clarifying questions. The named employees also met with CM#2, took CM#2’s statement, and asked clarifying questions. NE#1 then accurately documents their investigation—including CM#1’s belief that CM#2’s actions were related to the Complainant’s race—in an incident report, which was assigned to a follow-up unit (Homicide/Assault).

The Complainant also expressed concern about the nature of NE#1’s questions and statements to CM#1 that it did not sound as if any “racial or bias comments [were] made,” but instead that it was only the Complainant’s interpretation of CM#2’s comments that they were racially motivated. Here, the comment “go back to where you came from” was ambiguous. Although the statement “go back to where you came from” could reflect bias in some contexts, considered under the totality of the circumstances here, CM#2 could also have been referring to her belief that the Complainant was a squatter, or could have meant that the Complainant and CM#1—who resided in another area of the hallway—should go back to that area of the building. OPA finds it was appropriate for NE#1 and NE#2 to ask clarifying questions about the specific words that were used and why CM#1 and the Complainant believed they were racially motivated.

Relatedly, OPA cannot find that either named employee engaged in bias-based policing for not marking this incident as a hate crime or bias incident. As an initial matter, even considering CM#1’s allegations that CM#2 threatened to “kick [her] ass,” there did not appear to be any “reasonable fear of harm” to either the Complainant or CM#1 sufficient to support probable cause that a crime had occurred. *See* SPD Policy 15.120-POL-1 (defining “hate crime offense” and “malicious harassment”) (emphasis added). CM#2 was elderly, unarmed, and of a significantly smaller stature than CM#1, who was carrying pepper spray. Separately, even assuming the phrase “go back to where you came from” could—in some circumstances—qualify as “offensive derogatory comments,” *see id.*, the name employees spent significant time attempting to clarify whether these comments were even made (which CM#2 denied) or referred to the Complainant’s race. NE#1 told OPA that after speaking with the parties, he did not believe the incident constituted a hate crime or bias. Instead, he thought it was a misunderstanding of CM#2’s words.



Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #1

5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing

For the reasons at Named Employee #1, Allegation #1, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #2

15.120 - POL 3. Officers Will Document All Bias Crimes and Incidents on an Offense Report

It was alleged that NE#2 failed to document this incident as a bias crime or bias incident.

SPD Policy requires officers to document all bias crimes and incidents on an offense report. SPD Policy 15.120-POL-3. The definitions of a “hate crime offense,” “malicious harassment,” “crime with bias elements,” and a “bias incident” are provided in 15.120-POL-1.

As discussed above at Named Employee #1, Allegation #1, regardless of whether CM#1’s allegations constituted a crime or merely an “incident,” the named employee’s investigation did not lead them to the conclusion that CM#2’s statements were “derogatory” and “directed at” either CM#1 or the Complainant’s protected group statuses. Instead, the named employees concluded the comments referenced either CM#2’s belief that the Complainant was a “squatter” or was telling the Complainant and CM#1 to move away from the neighbor’s door and return to their apartment. OPA finds this was a reasonable conclusion under the circumstances.

OPA finds NE#2 did not document this incident as a bias crime or bias incident in the offense report but that this was appropriate under the circumstances. Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**